

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SUMMONS ISSUED

LANCE MCTIGUE,

Civil Action No.:

Plaintiff,

-against-

COMPLAINT

IRIZARRY, J.

ENHANCED RECOVERY COMPANY, LLC

DEMAND FOR JURY TRIAL

Defendant.

CV 11 -
CARTER, M.J.

4336

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ SEP 06 2011 ★
BROOKLYN OFFICE

Plaintiff LANCE MCTIGUE ("Plaintiff"), by and through his attorneys, LAW OFFICES OF ALLISON POLESKY, P.C., as and for his Complaint against the Defendant ENHANCED RECOVERY COMPANY, LLC ("Defendant" and/or "ERC"), respectfully sets forth, complains and alleges, upon information and belief, the following:

PRELIMINARY STATEMENT

1. Plaintiff brings this action on his own behalf for damages and declaratory and injunctive relief arising from the Defendant's violation(s) of §1692 et seq. of Title 15 of the United States Code, commonly referred to as the Fair Debt Collections Practices Act ("FDCPA") and New York General Business Law §349.

PARTIES

2. Plaintiff is a resident of the State of New York, residing at 3634 215th St., Bayside, NY 11361-2126.

3. Plaintiff is a "consumer" as that term is defined by 15 U.S.C. 1692a(3).

4. Defendant ERC is a Florida Limited Liability Corporation engaged in business of collecting debts with its principal place of business located at 8014 Bayberry Rd., Jacksonville, FL 32256.

5. ERC is a “debt collector” as the phrase is defined and used in the FDCPA under 15 U.S.C. §1692a(6).

JURISDICTION AND VENUE

6. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §1331, as well as 15 U.S.C. §1692 et seq. and 28 U.S.C. §2201.

7. The Court has supplemental jurisdiction over the state law claims in this action pursuant to 28 U.S.C. §1367(a).

8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

FACTUAL ALLEGATIONS

9. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered “1” through “8” herein with the same force and effect as if the same were set forth at length herein.

10. On information and belief, on a date better known to the Defendant, an unknown third party original creditor or creditors, either directly or through intermediate transactions assigned, placed, transferred, or sold the debt to ERC for collection (“the alleged debt”).

11. The alleged debt is a “debt” as defined by 15 U.S.C. §1692a(5).

12. On or about August 15, 2011, Defendant placed a telephone call to Plaintiff in an attempt to collect the alleged debt and at that time left a voice mail message.

13. Defendant’s voice mail message is the following: “Hello, this message is for Lance McTigue. If you are not this person, please delete this message as it’s not for you. This is Bob with Enhanced Recovery Company. We’re a collection agency attempting to collect a debt and any information obtained will be used for that purpose. Please contact me about this important business matter at 800-278-2420 or visit www.payerc.com and provide the following reference number 22605537.”

14. Defendant places telephone calls and leaves voice mail messages on the telephone belonging to Plaintiff's parents.

15. Defendant disclosed to Plaintiff's mother Roberta McTigue, an unauthorized third party, ERC's identity as a debt collector attempting to collect the alleged debt from Plaintiff.

16. Defendant violated 15 U.S.C. §1692b and §1692c(b) prohibiting third party disclosure when Plaintiff's mother Roberta McTigue heard the Defendant's voice mail message disclosing ERC's identity as a debt collector and that Plaintiff was being contacted by ERC in an attempt collect the alleged debt.

17. Defendant's actions caused the Plaintiff deep embarrassment and emotional stress when Plaintiff's mother Roberta McTigue inquired as to why Plaintiff was receiving phone calls from a debt collection company, who NCO is, why NCO calls and if Plaintiff is in serious trouble in violation of 15 U.S.C. §1692b and §1692c(b); §1692e-preface and (10) and §1692f-preface.

18. Plaintiff suffered and continues to suffer from great personal humiliation, embarrassment, mental anguish and emotional distress and other damages as a result of Defendant's harassment and actions.

19. Defendant violated the FDCPA.

20. Defendant violated New York General Business Law § 349.

21. Therefore due to the Defendant's gross violations of the FDCPA the Plaintiff has been damaged.

FIRST CAUSE OF ACTION
FAIR DEBT COLLECTION PRACTICES ACT

22. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered "1" through "21" herein with the same force and effect as if the same were set forth at length herein.

23. Defendant's debt collection attempts attempted and/or directed towards the Plaintiff violate various provisions of the FDCPA, including but not limited to the following:

- a. 15 U.S.C. §1692b.
- b. 15 U.S.C. §1692c(b).
- c. 15 U.S.C. §1692e-preface and (10).
- d. 15 U.S.C. §1692f-preface.

24. As a result of defendant's violations of the FDCPA, Plaintiff has been damaged and is entitled to damages in accordance with the FDCPA.

SECOND CAUSE OF ACTION
NEW YORK STATE GENERAL BUSINESS LAW §349

25. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered "1" through "24" herein with the same force and effect as if the same were set forth at length herein.

26. Defendant's debt collection efforts attempted and/or directed towards the Plaintiff violated the FDCPA. Defendant's violations include, but are not limited to, the following:

- a. The Defendant violated NYS Gen. Bus. Law §349(a).

27. As a result of Defendant's above violations of the New York General Business Law, the Plaintiff has been damaged and is entitled to damages in accordance with the New York General Business Law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff LANCE MCTIGUE demands judgment from the Defendant ENHANCED RECOVERY COMPANY, LLC as follows:

- A. For actual damages provided and pursuant to 15 U.S.C. §1692k(a)(1); and General Business Law
- B. For statutory damages provided and pursuant to 15 U.S.C. §1692k(2)(A);

and General Business Law

C. For statutory damages provided and pursuant to 15 U.S.C. §1692k(2)(B);

D. For attorneys' fees and costs provided and pursuant to 15 U.S.C. §1692k(a)(3); and General Business Law

E. A declaration that the Defendant's practices violated the FDCPA and General Business Law

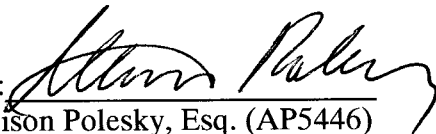
F. For any such other and further relief, as well as further costs, expenses and disbursements of this action, as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff LANCE MCTIGUE hereby respectfully requests a trial by jury for all claims and issues in his Complaint to which he is or may be entitled to a jury trial.

Dated: September 2, 2011

Respectfully submitted,

By: 

Allison Polesky, Esq. (AP5446)
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